

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERTA STEPHANI  
PODBIELANCIK,

Plaintiff,

v.

LPP MORTGAGE, LTD, et. al.,

Defendants.

CASE NO. C13-1934 MJP

ORDER GRANTING MOTION TO  
BIFURCATE AND REMAND

This matter comes before the Court on Defendant LPP Mortgage's motion to bifurcate and remand the unlawful detainer claim. (Dkt. No. 15.) Having reviewed the motion, Plaintiff's response (Dkt. No. 18.), Defendant's reply (Dkt. No. 19), and all related papers, the Court finds the state court lacked jurisdiction to consolidate LPP Mortgage's unlawful detainer claim with Plaintiff's case. Consequently, the Court GRANTS the motion.

**Background**

Plaintiff Roberta Stephani Podbielancik ("Podbielancik") executed a deed of trust in 2007, to secure a loan against her home. (Dkt. No. 2-1 at 6.) After Podbielancik failed to pay on

1 the loan, Northwest Trustee Services, Inc. issued a notice of trustee sale. (Id. at 59.) Defendant  
 2 LPP Mortgage later purchased Podbielancik's home in a non-judicial foreclosure sale. (Dkt. No.  
 3 1-1.)

4 Nearly six months after the sale, LPP Mortgage filed an unlawful detainer action in King  
 5 County Superior Court against Podbielancik. (Dkt. No. 15 at 1.) With the unlawful detainer  
 6 action pending, Podbielancik sued LPP Mortgage, Dovenmuehle Mortgage, Inc., Northwest  
 7 Trustee Services, Inc., and Mortgage Electronic Registration Systems, Inc. in King County  
 8 Superior Court, pursuant to Washington's Deed of Trust Act ("DTA case"). (Dkt. No. 2-1 at 1-  
 9 33.) She also moved to consolidate her DTA case with LPP Mortgage's unlawful detainer case.  
 10 (Id. at 80-85.)

11 On October 16, 2013, King County Superior Court issued an order for writ of restitution  
 12 to "put [LPP Mortgage] in possession" of the property, conditioned on LPP Mortgage posting  
 13 \$10,000.00 bond. (Dkt. No. 19-1 at 3.)

14 On October 28, 2013, LPP Mortgage removed the DTA case to this Court based on  
 15 federal claims and diversity. (Dkt. No. 1.) Simultaneously, LPP Mortgage filed a copy of the  
 16 removal notice with King County Superior Court. (Dkt. No. 3.) Later that same day, the state  
 17 court consolidated the unlawful detainer action with the DTA action. (Dkt. No. 15 at 2.)

18 LPP Mortgage now moves to bifurcate and remand the unlawful detainer action to state  
 19 court. (Id.)

## 20 Discussion

21 Under 28 U.S.C. 1446(d), a defendant removing a case to federal court must file a notice  
 22 of removal promptly with the state court. 28 U.S.C. 1446(d). The filing of the notice of removal  
 23 with the state court "shall effect the removal and the State court shall proceed no further unless  
 24

1 and until the case is remanded.” 28 U.S.C. 1446(d). State court actions taken after the filing of a  
 2 notice of removal are void. Maseda v. Honda Motor Co., Ltd., 861 F.2d 1248, 1254–55 (11th  
 3 Cir. 1988). Ninth Circuit case law follows the plain language meaning of this statute. See, e.g.,  
 4 Sexton v. NDEX West, LLC, 713 F.3d 533 (9<sup>th</sup> Cir. 2013). “An order entered by a state court  
 5 should be treated as though it had been validly rendered in the federal proceeding.” Carvalho v.  
 6 Equifax Info. Servs., LLC, 629 F.3d 876, 887 (9th Cir. 2010) (internal quotes omitted).

7 Applying those legal principles to this case, the state court lacked jurisdiction to  
 8 consolidate the unlawful detainer action with the DTA action because it occurred after  
 9 Defendants filed the notice of removal. (Dkt. No. 3.) Because the state court lost jurisdiction  
 10 over the DTA case when the notice of removal was filed, the consolidation order is void.

11 Even if the Court were to ignore this fundamental defect, the state court has already  
 12 reached the merits by ordering a writ of restitution only conditioned on LPP Mortgage’s posting  
 13 of a bond. Because no further proceedings exist in the unlawful detainer action, this Court’s  
 14 exercise of supplemental jurisdiction is unwarranted.

### 15 Conclusion

16 Having been entered only after removal, the state court’s consolidation order is void. The  
 17 Court therefore GRANTS the motion to bifurcate and remand.

18 The clerk is ordered to provide copies of this order to all counsel.

19 Dated this 19<sup>th</sup> day of February, 2014.

20  
 21 

22 Marsha J. Pechman  
 23 Chief United States District Judge  
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